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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,577	02/18/2004	Stephen C. Bytnar	040051	3047

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PITTSBURGH, PA 15219

EXAMINER

BRUNSMAN, DAVID M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,577

Applicant(s)

BYTNAR ET AL

Examiner

David M. Brunzman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-17, 19 and 23-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-10, 11+6, 12+7, 26+(6,9,10), 27+(6,9,10) and 28+(6,9,10) is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continuation of Disposition of Claims: Claims rejected are 1-5, 11+1, 12+2, 14-17, 19, 23, 24, 25, 26+(1,4,5,14,23), 27+(1,4,5,14,23), 28+(1,4,5,14,23), 29-35.

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Claims 1-6, 11, 12, 14-17, 19 and 23-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 1, 14, 23 and 29 recite application of "an effective amount" but, fail to particularly recite that which it is effective to do. The dependent claims do not supply this deficiency. Claim 25 depends on claim 23, which recites as much as 50% sugar by weight. Claim 25 also requires at least 60% salt. It is unclear if claim 25 is intended to further limit the sugar content of claim 23.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 19, 23, 24, 25, 26+1, 26+4, 26+23 and 29-34 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4728393.

The reference, see especially tables 3 and 5 and, examples 5 and 7, teaches a process of treating a road or aggregate/grit pile (see column 3, lines 45-53, by spraying on a compositions comprising dissolved monosaccharide sugar solids, lignin and hygroscopic salts such as sodium carbonate and chloride and even trace amounts of calcium salts including chlorides. The lignin and monosaccharides comprise about 1-25% by weight solids of the composition. The salts comprise about 90% by weight of the solids.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

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ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 11+1, 12+2, 14-17, 19, 23-25, 26+1, 26+4, 26+5, 26+14, and 26+23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6468442, published as WO 01/07532 on 01 February 2001, in view of 4728393.

Column 6, line 69 through column 7, line 13, teach commercially available Caliber™ products comprising 80-90% brine of a salt such as $MgCl_2$ and a remainder of 36 PE corn syrup containing 60% dissolved sugar solids comprising 14% dextrose, 11.5% maltose, 10.5% maltotriose and 69% higher saccharides (dextrose polymers) that are applied to outdoor surfaces including roads. Independent claims 1, 14 and 23 recite a method of treating a particulate matter. The primary reference appears to only address hard surfaces. US 4728393 teaches that roadway deicing compositions, of which the primary reference is an example, may also be used to prevent freezing of aggregate or grit storage piles. It would have been obvious to one of ordinary skill in the art to apply the composition of 6468442 to prevent freezing of storage piles because the 4728393 reference indicates one of ordinary skill in the art would expect a deicing composition to be effective therefor.

Claims 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6468442.

The reference teaches a method of treating a surface, such as a road, by applying an aqueous treating agent comprising a dissolved sugar solid.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 27+ (1, 4, 5, 14, 23) and 28+(1, 4, 5, 14, 23) are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6468442 in view of 4728393, as applied above, in further view of US 5714387.

The difference between the above combination and the instant claims is the presence of a tracer component such as a fluorescent dye. US 5714387 teaches a method of determining the dosage rate of dust control agents sprayed on dusty surfaces by including a fluorescent dye in the material to be sprayed and then measuring fluorescence. While the intended use of the sprayed composition in 5714387 is different from that of the primary reference, one of ordinary skill in the art is clearly taught the technique useful for determining material deposition rates using a fluorescent dye. It would have been obvious to one of ordinary skill in the art to include a fluorescent dye in the composition because one of ordinary skill in the art is taught deposition rates may be determined therewith.

Claims 27+(1, 4, 23) and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4728393, in view of US Patent 5714387.

The difference between the above combination and the instant claims is the presence of a tracer component such as a fluorescent dye. US 5714387 teaches a method of determining the dosage rate of dust control agents sprayed on dusty surfaces by including a fluorescent dye in the material to be sprayed and then measuring fluorescence. While the intended use of the sprayed composition in 5714387 is different from that of the primary reference, one of ordinary skill in the art is clearly taught the technique useful for determining material deposition rates using a fluorescent dye. It would have been obvious to one of ordinary skill in the art to include a fluorescent dye in the composition because one of ordinary skill in the art is taught deposition rates may be determined therewith.

Claims 6-10, 26+(6,9,10), 27+(6,9,10) and 28+(6,9,10) are allowable over the prior art of record. The prior art of record fails to teach or suggest using an aqueous sugar solids

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compositions in a process for treating an area in need of dust control or soil stabilization.

The teachings of methods using similar compositions as deicing compositions do not suggest use on an area specifically in need of dust control or soil stabilization.

Claims 13, 18 and 20-22 have been cancelled.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, W, F, Sa; 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David M Brunzman
Primary Examiner
Art Unit 1755

DMB

A handwritten signature in black ink, appearing to read 'DMB', with a long horizontal stroke extending to the right.